

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

**REGARDING ADOPTION OF AMENDMENTS TO THE 2007 CALIFORNIA BUILDING
STANDARDS CODE, TITLE 24, CALIFORNIA CODE OF REGULATIONS (CCR), PARTS 2, 3,
4, 5 and 6 in TITLE 24, CCR, PART 11, CALIFORNIA GREEN BUILDING STANDARDS CODE**

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS

The Office of Statewide Health Planning and Development (OSHPD) finds that no revisions have been made which would warrant a change to the initial statement of reasons.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The OSHPD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

**OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED
REGULATION(S)**

No section number:

COMMENTER: William Schock, CALBO,

Mr. Schock comments that; 1) hyperlinks to private websites should not be included in the body of the code, 2) when state agencies adopt the same sections the language should be correlated to avoid inconsistencies and duplication, and 3) language used should be enforceable language.

RESPONSE: While the comments are not directed to a specific code section proposed, OSHPD and CBSC believe that the comments have merit and have worked with the other state agencies proposing adoption of the CGBC to coordinate language, provide more generic informational references instead of specific web pages and ensure that proposed text is written in an enforceable tone. OSHPD and CBSC will continue this effort in future development of this code.

No section number: (Criteria 1, 2, 6, and 7)

COMMENTERS: Scott Harriman, Senior Planner, and Robert Woods, Chief Building Inspector, City of Walnut Creek

The commenters suggest that the proposed regulations overlap with the energy code and clean water provisions. The standards already exist (for example, Green Point Rated and LEED), and they suggest adoption of one of those systems. They suggest that 1) enforcement should not be difficult compared to energy standards that are already enforced, 2) use of an affidavit from the designer or consultant to certify compliance, 3) use of third party inspectors, although they do not favor this idea as burdensome on the owner and builder, and 4) non-mandatory compliance options need to be clarified, since they do not seem to serve any purpose. Further, they feel that these standards will impose additional staff time on the city for plan review and inspection.

RESPONSE: OSHPD and CBSC observe that the comments lack specificity in identifying the adoption, amendment, or repeal of regulations that are being proposed and do not make specific suggestions to specific text. OSHPD and CBSC note that points-based systems such as Green Point Rated and LEED are not national standards, and cannot be adopted as such. No code changes have been proposed to OSHPD's rulemaking package as a result of this comment. CBSC will take the concerns expressed in these comments to the next rulemaking cycle.

Section 101.2

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

Change Item #5 "Environmental air quality" to 'Indoor air quality'. Chapter 8 refers to Indoor Air Quality (IAQ), so changing the language here clarifies its applicability, vis a vis outdoor air quality.

RESPONSE: OSHPD is not accepting the commenters' proposed change, because limiting standards to indoor air quality may ignore outdoor air quality impacts, such as those for ozone-depleting chemicals, environmental tobacco smoke, and VOCs emitted by exterior coatings. Also, other building standards affecting outdoor air quality may be identified in future development of this code, as coordinated with the California Air Resources Board (ARB).

Section 101.3

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

Add the phrase "as noted further in Sec 101.3.1" to the end of the section, because this standard should apply to all buildings in the State of California. (Criteria 1 and 6)

RESPONSE: OSHPD is not accepting the commenters' proposed change, because the addition of the phrase "as noted further in Sec 101.3.1" does not follow code format or correspond to Chapters 1 in other parts of Title 24. Its addition is unnecessary since §101.3.1 is clearly a subsection of 101.3.

Section 101.7

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council; Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al; and William Schock, California Building Officials (CALBO):

Delete the last sentence "However, in no case shall the [local] amendments, additions or deletions to this code be effective any sooner than the effective date of this code". Based on criteria 6 and 3, this phrase is vague, because the standards in the code are largely voluntary.

RESPONSE: OSHPD is not accepting the commenters' proposed change, because the subject phrase corresponds to Building Standards Law, State Housing Law, and Chapters 1 in other parts of Title 24. While the commenter notes that the current proposal is for voluntary standards and thus effective date is a moot point, local jurisdictions may wish to adopt some of them as mandatory. Also, OSHPD will be proposing mandatory provisions for future editions of the code, when effective date may have more impact.

Section 101.7.1

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

In Item #1 of this section "... findings ... based upon climatic, topographical, or geological conditions" - clarify if "climatic" refers to local climatic conditions or global climatic considerations. Meaning of "climatic" considerations is unclear. For example, a local

authority may desire to adopt more carbon emission-related stringent codes out of concern for global climate change, vs. local climatic conditions. (Criterion 6)

RESPONSE: OSHPD is not accepting the comment, because the terms are in Building Standards Law, and OSHPD has no authority to determine how a jurisdiction makes its local findings.

Section 102.3

COMMENTER: William Schock, CALBO:

Add, in the second sentence, the phrase after “special documentation . . . as specified in this code or as required by the enforcing agency.”

RESPONSE: OSHPD is not accepting the commenter’s proposed change, because it is not needed. OSHPD has proposed withdrawing the entire sentence which the commenter has proposed amending as extraneous to the meaning of the paragraph. Further development of documentation and verification requirements is anticipated in the next rulemaking cycle, when OSHPD will propose mandatory standards with input from stakeholders. The withdrawal was submitted in a 15-day comment period, and OSHPD received no comments on the revision.

Section 202, Definitions

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

"CONDITIONED SPACE. A space in a building that is either directly conditioned or indirectly conditioned" definitions are ambiguous. The definition of "directly conditioned" and "indirectly conditioned" are missing, so the definition for "conditioned space", which relies on these other terms is inadequate. Definitions for directly conditioned and indirectly conditioned are provided in the 2007 Energy Code. (Criterion 6)

RESPONSE: OSHPD is not accepting the commenters’ proposed changes, because the definition is consistent with Part 6. Also, §201.3 notifies the code user that there are many terms in other parts of Title 24 and other referenced documents that are defined therein. Space precludes defining them all in this chapter.

Chapter 5

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

Add verbiage clarifying that the designer has the option to design his building based on either the Performance or the Prescriptive Approach. (Criteria 5 and 6)

RESPONSE: OSHPD is accepting the commenters’ proposed changes, and has added such verbiage in Section 501.1

Section 502.1

Definition of “Energy Star”

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

Revise the definition of Energy Star to match the Energy Star website.

RESPONSE: OSHPD is accepting the comment by revising the definition to align with that on ENERGY STAR’s website, and it submitted the change in a 15-day comment period. OSHPD received no comments on the revision.

Section 502.1

Definition of “Time Dependent Valuation (TDV) Energy”

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council; Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al; and Randall Higa, Southern California Edison, on,

USGBC and Mr. Poirier request a sentence at the beginning of the definition: “TDV refers to the fact that saving peak power is more important than non-peak power because it is more expensive to produce and more polluting to create.”

Mr. Higa requests a change to the word “energy” to the words “energy cost”.

RESPONSE: OSHPD is not accepting the proposed changes from USGBC and Mr. Poirier, because it accepts the comment of Mr. Higa. This achieves the goal of the commenters, that TDV energy recognizes that peak energy is more expensive and more polluting to produce. The change was submitted in a 15-day comment period, and OSHPD received no comments on the revision.

Section 504

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

Add additional requirements in the prescriptive approach including upgraded window performance (including thermal breaks in metal window mullions) and upgraded insulation.

RESPONSE: OSHPD is not accepting the commenters’ proposed changes, because the changes, while they may have merit, are beyond the scope of this rulemaking. OSHPD, CBSC, the California Energy Commission and other stakeholders will be developing these standards further in the next rulemaking cycle.

New Section 505

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

Add a new Section 505, Mandatory requirements, for all buildings, consisting of items listed in the prescriptive approach: energy monitoring, demand response controls, and commissioning. These would increase the benefit to the environment for both the performance and prescriptive approaches.

RESPONSE: OSHPD is not accepting the commenters’ proposed changes, because OSHPD will be proposing mandatory provisions in the next rulemaking cycle and solicit stakeholder input as part of the process.

Section 701.1

COMMENTERS: Dan Geiger and Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al :

Add: “and use of materials that reduce the off-site impacts of harvesting, manufacturing, and transport of materials, such as habitat destruction, off-site air and water pollution, and deforestation.” These important environmental considerations should be added to the scope of this section.

RESPONSE: OSHPD is not accepting the commenters’ proposed changes, because the changes, while they may have merit, are beyond the scope of this rulemaking. OSHPD and other stakeholders will be developing these standards further in the next rulemaking cycle.

Section 708.3

COMMENTERS: Dan Geiger & Andrea Traber, United States Green Building Council; Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al; and Bart Croes, P.E., ARB:

Recommend construction waste reduction of at least 75%. Mr. Croes suggests that the 50% reduction rate be mandatory. The others comment that California law already requires local governments to achieve a 50% solid waste diversion rate, and, therefore, 50% is too low a bar to qualify as a green building practice.

RESPONSE: OSHPD is not accepting the commenters’ proposed changes, because the changes are beyond the scope of this rulemaking. USGBC’s comment states that the provision for 50% construction waste diversion is mandated, but it refers to 50% of all solid waste. ARB’s

observation is that 50% construction waste diversion is readily achievable. However, the GB CAC recommended against a tiered approach to standards, advising instead requiring “at least” or “a minimum of” a single value. OSHPD, CBSC, the California Integrated Waste Management Board, and other stakeholders will review these standards in the next rulemaking cycle.

Section 710.1

COMMENTER: John “Jay” Marlette, individual:

Mr. Marlette recommends composting be considered in this regulation for recycling by building occupants.

RESPONSE: OSHPD is not accepting the commenter’s proposed change, because the change, while it may have merit, is beyond the scope of this rulemaking. OSHPD, CBSC, the California Integrated Waste Management Board, and other stakeholders will review these standards in the next rulemaking cycle.

Section 710.1.1

COMMENTER: William Schock, CALBO :

Mr. Schock requested that this section be moved to the appendix chapter. (Criteria 1 through 8)

RESPONSE: OSHPD is not accepting the commenter’s proposed change, because the provision currently is in statute, although the sample ordinance referenced is located in an appendix to the law cited. OSHPD, CBSC, the California Integrated Waste Management Board, and other stakeholders will review these standards in the next rulemaking cycle.

Section 802.1

COMMENTER: Bart Croes, P.E., ARB:

Provide references to Title 17 for ARB’s definitions in the proposed definition for volatile organic compounds (VOCs).

RESPONSE: OSHPD is accepting a portion of the comment and is proposing to amend the definition to reference Title 17. The reference is editorial and does have regulatory effect. CBSC does not use the terms Low Vapor Pressure-VOC and Reactive Organic Compound in its proposed text and is not proposing to include a definition of those terms. This change was submitted in a 15-day comment period, and OSHPD received no comments on the revision.

Section 804.4

COMMENTER: Bart Croes, P.E., ARB on:

We recommend that finish material pollutant control provisions be mandatory, not optional, because they incorporate existing state regulations and because low-emission materials are widely available.

RESPONSE: OSHPD is not accepting the commenter’s proposed change, because the change, while it may have merit, is beyond the scope of this rulemaking. OSHPD will be proposing mandatory provisions in the next rulemaking cycle and solicit stakeholder input, including that of ARB, as part of the process.

Section 804.4.1

COMMENTER: Bart Croes, P.E., ARB

Mr. Croes suggests that both HCD and CBSC extensively modify language that is currently proposed to include references to portions of regulations adopted by the California Air Resources Board, and delete Table 804.4.1. The comment also states that Section 804.4.1 lists sealants as a regulated item but Table 804.4.1 does not include any VOC limits for sealants.

RESPONSE: OSHPD is accepting part of the comment and proposing to omit references to sealants. These changes were submitted in a 15-day comment period, and OSHPD received no comments on the revisions. OSHPD is also adding footnotes to Tables 804.4.1 and 804.4.2 to refer code users to South Coast Air Quality Management District rules from which the tables are derived. These additions are editorial and have no regulatory effect; they simply point the code user to information needed to measure the VOC content specified in the tables. OSHPD did not submit these changes in a 15-day comment period.

OSHPD is not accepting the rest of the commenter's proposed changes, because the changes are beyond the scope of this rulemaking. OSHPD, CBSC, ARB, and other stakeholders will review these standards in the next rulemaking cycle.

Section 804.4.2 and Table 804.4.2

COMMENTER: Bart Croes, P.E., ARB:

We recommend that Table 804.4.2 be replaced with Table 1 of ARB's Architectural Coatings Suggested Control Measure. While the values in some cases are not as stringent as SCAQMD's Rule 1113, they have statewide application.

RESPONSE: OSHPD is not accepting the commenter's proposed changes, because the changes, while they may have merit, are beyond the scope of this rulemaking. OSHPD, CBSC, ARB, and other stakeholders will review these standards in the next rulemaking cycle.

Section 804.4.2

COMMENTERS: Dan Geiger & Andrea Traber, United States Green Building Council and Paul Poirier, AIA, LEED AP, Poirier + David Architects, et al on:

Table 804.4.2 - This table should only have one column for effective date, omit one column.

RESPONSE: OSHPD is not accepting the commenters' proposed changes, because it wishes to maintain a column for future effective dates for VOC limits. The multiple columns also provide historical information on the changes to VOC limits in California.

Section 804.4.3.2

COMMENTER: Bart Croes, P.E., ARB:

ARB pointed out that the reference to Section 804.1.1 was not correct and that a typographical error also appeared in this section.

RESPONSE: OSHPD is accepting the comment, which is editorial and does not have regulatory effect. These changes were submitted in a 15-day comment period, and OSHPD received no comments on the revisions.

Section 804.4.4 and Table 804.4.4

COMMENTER: Bart Croes, P.E., ARB:

Include a reference to ARB Airborne Toxic Control Measure (ATCM) recently approved by the Office of Administrative Law in Title 17.

RESPONSE: OSHPD is accepting the comment. The ATCM has been cited as a reference in a footnote to Table 804.4.4 to ensure the code user is aware that the maximum limits in Table 804.4.4 are consistent with the maximum values developed by the ARB and approved since this rulemaking began. The amendment merely provides clarity and is sufficiently related to the original proposal for the public to have been adequately noticed that the change might occur. This change was submitted in a 15-day comment period, and OSHPD received no comments on the revisions.

Section 804.4.4.1

COMMENTER: William Schock, CALBO:

Mr. Schock requested that this section be deleted in its entirety. (Criteria 1 through 8)

RESPONSE: OSHPD is not accepting the commenter's proposed change, because currently the standards are voluntary. OSHPD, CBSC, ARB, and other stakeholders will review these standards in the next rulemaking cycle when CBSC will be proposing mandatory provisions for future editions of the code.

Section 804.4.4.1

COMMENTER: Bart Croes, P.E., ARB:

Edit this section to read "...where complying product is readily available..." to minimize the chance of obtaining costly product with higher embodied energy from overseas.

RESPONSE: OSHPD is accepting the comment, because it is sufficiently related to the original proposal for the public to have been adequately noticed that the change might occur. This change was submitted in a 15-day comment period, and OSHPD received no comments on the revisions.

Section 804.4.4.4

COMMENTER: Bart Croes, P.E., ARB:

We suggest minor editorial revisions to this section on documentation of compliance.

RESPONSE: OSHPD is accepting the comment, because the changes suggested by ARB are editorial and do not have regulatory effect. This change was submitted in a 15-day comment period, and OSHPD received no comments on the revisions.

Section 804.5.1, Item 3

COMMENTER: William Schock, CALBO:

Mr. Schock requested that this item be deleted in its entirety. (Criteria 1 through 7)

RESPONSE: OSHPD is not accepting the commenter's proposed change, because the standard proposed offers an economic alternative to permanently installed systems, and it appears to be verifiable by enforcement authorities. OSHPD, CBSC, CDPH, and other stakeholders will review these standards in the next rulemaking cycle.

Section 804.7

COMMENTER: William Schock, CALBO:

Mr. Schock requested that this section be deleted in its entirety. (Criteria 1 through 7)

RESPONSE: OSHPD is not accepting the commenter's proposed change, because the standard proposed for disapproval is more stringent than California law, thus "greener", and it recognizes the authority of local jurisdictions and educational institutions to adopt stricter regulations yet.

Section 805

COMMENTER: Jed Waldman, California Department of Public Health (CDPH), IAQ Program:

Add subsection(s) that provide for verification of compliance with mold and moisture management requirements during all phases of a building project. Reference *Greenguard GGBS MP.001, Mold and Moisture Management Standard for New Construction*, when approved.

RESPONSE: OSHPD is not accepting the commenter's proposed changes, because the change, while they may have merit, are beyond the scope of this rulemaking. Also, the construction standard to which the comment refers has not yet been approved as a national standard. OSHPD, CBSC, CDPH, and other stakeholders will review these standards in the next rulemaking cycle.

Section 807

COMMENTER: William Schock, CALBO:

Mr. Schock requested that this section be moved to the appendix chapter. (Criteria 1 through 8)

RESPONSE: OSHPD is not accepting the commenter's proposed changes, because the standards as currently proposed are voluntary. OSHPD will be proposing mandatory provisions in the next rulemaking cycle and will solicit stakeholder input as part of the process.

Section 807.5

COMMENTER: Bart Croes, P.E., ARB on:

We recommend including the 2006 CHPS prerequisite for classrooms to mitigate poor acoustical quality often experienced in classrooms.

RESPONSE: OSHPD is not accepting the commenter's proposed changes, because the changes, while they may have merit, are beyond the scope of this rulemaking. OSHPD, CBSC, ARB, DSA and other stakeholders will review these standards in the next rulemaking cycle.

Chapter 10

COMMENTER: Erik S. Emblem, SMACNA:

Mr. Emblem urged care in drafting this reserved chapter for installer and third-party qualifications, supporting well-written and thought-out standards, in the next rulemaking cycle.

RESPONSE: OSHPD is not accepting the commenter's proposed changes, because they are not directed at specific proposals, but OSHPD appreciates the interest in participating. OSHPD and CBSC will be proposing mandatory provisions in the next rulemaking cycle and will solicit stakeholder input as part of the process.

Appendix A, Sections A402.1

Definitions of low-emitting vehicles, A406.1.5 and Table A406.1.5.1:

COMMENTER: Bart Croes, P.E., ARB on,

These sections should be included in the main body of the standards, because motor vehicle emissions are a major contributor to emissions of air pollutants and green house gases.

"Low-emitting vehicles" should be clearly defined to coordinate with state and federal regulations. We also recommend changing the threshold value from 8% to least 10% of parking spaces.

RESPONSE: OSHPD is not accepting the commenters' proposed changes, because the changes are beyond the scope of this rulemaking. OSHPD's standards are currently proposed to be voluntary. OSHPD agrees with ARB that important greenhouse gas-reducing provisions originally proposed for Chapter 4 should be reviewed in the next rulemaking cycle with an eye to establishing a balance among federal, statewide and local authorities. Also, OSHPD, CBSC and ARB collaborated on the definition of "low emitting" vehicles in code development, and they will work together in the next rulemaking cycle to align further the language with the regulations cited. Finally, the threshold percentage for preferred parking for low emitting and carpool vehicles will be reviewed in the next rulemaking cycle when OSHPD will be proposing mandatory provisions for future editions of the code. If this becomes a mandatory provision, the percentage suggested by Mr. Croes may be too high.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

OSHPD has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the adopted regulation.

**REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES**

No alternatives were proposed. Because the proposed regulations are voluntary, OSHPD has determined that the proposed regulations will not have an adverse economic impact on small businesses.